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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
FLEMING & HUGHES, INC.)
d.b.a. FHA BUILDERS,)
Appellant,)
v.)
BENTON-FRANKLIN-WALLA WALLA)
COUNTIES AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 77-122

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER DAVE J. MOONEY:

This matter, the appeal by Fleming & Hughes, Inc. d.b.a. FHA Builders of a civil penalty of \$200 for fugitive dirt and blow-sand at a construction site in Kennewick, Washington, came on for hearing before the Pollution Control Hearings Board in Pasco, Washington on November 8, 1977. All Board members were present; Chairman W. A. Gissberg presided. Respondent elected an informal hearing.

1 Appellant appeared through its President James E. Fleming,
2 respondent through its attorney, Philip M. Rodriguez. Witnesses
3 were sworn and testified.

4 From testimony heard and exhibits examined, the Pollution
5 Control Hearings Board makes these:

6 FINDINGS OF FACT

7 I

8 Appellant is a builder engaged in the construction of homes
9 in an area known as Park Hills near 19th and Olympia in Kennewick,
10 Washington.

11 II

12 Appellant purchased twelve lots for home construction on
13 March 1, 1977. At the time of purchase the land was bare.
14 Although appellant paid the City of Kennewick for five water
15 connections, the city would only install one meter until the
16 houses were ready to be occupied, even though he had five homes
17 under construction.

18 III

19 Appellant was aware of dust problems. He had been making
20 efforts to keep the dust down by engaging an employee to place
21 water on the ground. Because one water connection was inadequate
22 to cover the five construction sites, appellant purchased an
23 irrigation pump for \$500 to enable him to use water from a nearby private
24 irrigation water system, only to find that system was not functioning.
25 Another alternative for appellant to get water for dust control was from a
26 distant fire hydrant which would have required purchasing a hydrant val.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 from the city, had one been available, and purchasing or renting 1,100
2 feet of pipe to reach his property. However, the City of Kennewick
3 passed an ordinance on June 27, 1977 for the purpose of conserving water,
4 which discouraged such use for dust control. Paradoxically, the city
5 would allow water trucks to have water.

6 IV

7 During certain times of the year wind storms hit the area and
8 on July 28, 1977 gusting winds up to fifty miles per hour occurred.
9 People who suffered from allergies were affected by the blowing
10 air contaminants, i.e., dust from appellant's property into their
11 homes, and complained to the respondent.

12 V

13 The respondent's control officer issued a notice of violation,
14 when he found particulate material blowing airborne from appellant's
15 property. For this violation appellant was assessed a civil penalty
16 of \$200 (of which \$50 was suspended) for violation of respondent's
17 Regulation 75-7, Section 4-040(2)(5) and (7), which provides:

18
19 (2) No person shall cause or permit the
20 emission or dispersion of particulate matter
21 from any source which becomes deposited beyond
22 the premises of the pollution source in
sufficient quantity to interfere unreasonably
with the use and enjoyment of the property
upon which the material was deposited.

23
24 (5) No person shall cause or permit the
25 emission of any air contaminant or water
vapor from any source, including any air
contaminant whose emission is not otherwise
prohibited by this regulation, if the air
contaminant or water vapor causes detriment
to the health, safety or welfare of any person,
or causes damage to property or business beyond
the premises of the source.

- 1 (7) Reasonable precautions shall be taken
2 to prevent fugitive particulate material from
3 becoming airborne:
4 (a) When handling, transporting or storing
5 particulate material;
6 (b) When constructing, altering, repairing
7 or demolishing a building, its appurtenances,
8 or a road;
9 (c) From a roadway not originally designed
10 for extra traffic load, even though such
11 extra traffic may be only temporary;
12 (d) From an untreated open area. No person shall
13 break the natural surface cover of the ground
14 or the surface layer of a field in the
15 process of land clearing, leveling or grading
16 without reasonable precautions to prevent
17 air pollution.

18 Section 4-130 provides for a civil penalty of up to \$250 per
19 day for each violation of General Regulation 75-7.

20 VI

21 Appellant has had no previous violations and has always tried
22 to comply with the respondent's regulations.

23 VII

24 Any Conclusion of Law which should be deemed a Finding of Fact
25 is hereby adopted as such.

26 From these Findings, the Pollution Control Hearings Board
27 comes to these

28 CONCLUSIONS OF LAW

29 I

30 This Board has jurisdiction of the subject case.

31 II

32 Appellant violated Section 4-040(2)(5) of respondent's
33 Regulation 75-7. Respondent did not prove a violation of

1 Section 4-G40(7).

2 III

3 The civil penalty should be affirmed. However because of
4 appellant's previous record and his difficulties in dealing
5 with the City of Kennewick, who had established higher priorities for
6 water use than dust control, the Board suspends an additional \$100 of the
7 civil penalty on the condition appellant have no further violations
8 for a period of one year. The net result of the Board's action is that
9 \$150 of the \$200 civil penalty is conditionally suspended.

10 IV

11 Any Finding of Fact which should be deemed a Conclusion of Law
12 is hereby adopted as such.

13 Therefore, the Pollution Control Hearings Board issues this

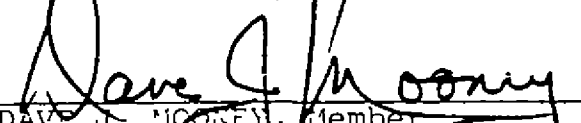
14 ORDER

15 The \$200 civil penalty is affirmed, provided however, that \$150
16 of the civil penalty is suspended on condition that appellant not
17 violate respondent's regulations for a period of one year after the
18 date of this order.

19 DATED this 22nd day of November, 1977.

20 POLLUTION CONTROL HEARINGS BOARD

21 
22 W. A. GISSBERG, Chairman

23 
24 DAVE J. MOONEY, Member

25 
26 CHRIS SMITH, Member

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER